



Atty. Dkt. No. 026032-4923

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Kienke et al.

Title: RECLINER MECHANISM

Appl. No.: 10/549,554

International 3/4/2004

Filing Date:

371(c) Date: 9/19/2005

Examiner: Anthony D. Barfield

Art Unit: 3636

Confirmation 3782

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent.

The Patent Office determined that the patent was entitled to 399 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op.

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at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 697 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 727 days

(b) Total Applicant delay: 30 days

Final PTA Determination: 697 days

Applicants therefore respectfully request that the patent be accorded 697 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 26, 2009

By 

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# Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 026032-4923  
 Application Number: 10/549554  
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
CLOSE WINDOW Edit Delete	ALL CASES Priority Date SELECT CASE	03/19/2003	-915		
Edit Delete	International Filing Date	03/04/2004	-564		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	09/19/2005	0		
	PCT National Stage Commencement Date	09/19/2005	0		
	14 month From Application date	11/19/2006	426		
Edit Delete	Non-Final Office Action	01/22/2008	855	429	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/22/2008	946		
Edit Delete	Final Office Action	08/04/2008	1,050		
	3 Year Period Starts	09/19/2008	1,096		
	Final Office Action + 3 months	11/04/2008	1,142		
Edit Delete	Final Office Action Response Received at PTO	12/04/2008	1,172		30
Edit Delete	Notice of Allowance	12/31/2008	1,199		
	Projected Patent Grant Date	07/14/2009	1,394	298	
				Totals: 727	30
				PTA: 697	

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Foley & Lardner LLP